IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 179 of 2005

For Approval and Signature:

HON'BLE MR. JUSTICE M.D. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VISHNU DIPCHAND RATHOD

Versus

THE STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 179 of 2005

MR MP SHAH for Petitioner No. 1

MS. KRUTI M SHAH for Petitioner No. 1

Mr.K.P.Raval, A.P.P. for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR. JUSTICE M.D. SHAH

Date of decision: 03/05/2005

ORAL JUDGEMENT

Heard the learned Counsel Mr.M.P.Shah with Mr. K.M.Shah for the petitioner and learned A.P.P. Mr. K.P.Raval for the respondent no.1-State.

1. Rule. Learned A.P.P. Mr. K.P.Raval waives service of rule on behalf of the respondent no.1-State. With the consent of the learned Advocates of both sides, the matter is taken up for final hearing and disposal today.

2. This Criminal Revision Application is directed against the judgment and order dated 3-3-2005 passed by the learned In-charge Jt. J.M.F.C.., Bardoli in Criminal Misc. Application no.50/2005 arising from Prohibition Station C.R. No.1363/2004 registered with Bardoli Police Station rejecting the prayer made by the applicant for custody of the Maruti Frontie Car in question in an application filed under Sec.451 of the Criminal Procedure Code.

3. It is the case of the applicant that on 3-10-2004, the police of Prohibition Staff Force, Sector -I, Surat Vibhag had seized bottles of English liquor valued at Rs.31,130 from a Maruti Frontie Car no.GJ-15, DD-4796 from the sim of village Bagumara, Bardoli, District Surat. Accordingly a complaint came to be lodged being Bardoli Police Station CR no.1363/2004 for the offences under various Sections of the Bombay Prohibition Act and the Muddamal liquor as well as the car in question was kept in custody of the police as per the Magistrate's order. It is further the case of the applicant that he had given the car in question to one Jayesh Babu Parmar who had changed the number plate of the said car to GJ 15, DD 4796 in place of the correct no.DD-03-C-2606 and used in the commission of offence. The applicant thereupon moved an application under Section 451 of the Criminal Procedure Code before the learned In-charge, Jt. Judicial Magistrate, First Class, Bardoli, being Criminal Misc. Application no.50/2005 for release of Maruti Frontie Car no.DD-03-C-2606 (on which car the number plate was changed by the driver of the car at the relevant time to no.GJ-15 DD-4796) which came to be rejected after considering the relevant police report and hearing the parties, giving rise to the present Criminal Revision Application.

In order to decide the controversy involved in this Revision, it will be appropriate to refer here the two decisions rendered by the Apex Court (1) SUNDERLAL AMBALAL DESAI v. STATE OF GUJARAT reported in 2003(1) GLH 307 and (2) RAJENDRA PRASAD v. STATE OF BIHAR AND ANR. reported in (2001) 10 Supreme Court Cases 88 where in an identical circumstance, the Supreme Court has ordered interim custody of the seized vehicle to the

petitioner.

4. Now, in this matter, though notice has been duly served, none appears on behalf of the respondent no.2. The respondent no.2-the original owner has filed an affidavit to the effect that he has no objection if the car in question is handed over to the applicant as he had sold the same to the present applicant for which an agreement of sale is also executed on 6th May, 2005. Apart from this, the applicant has produced number of documents to show, namely, engine no 2658513, chassis no.1912617 and model-March, 2004 though in the RTO records the name of the applicant is not entered to which he had explained that he had met with an accident at the relevant time. Moreover, there is no allegation that the vehicle in question has been used in the commission of any offence on any other occasion. There is no claim of ownership by any third party as well.

Viewed in the light of the facts situation as aforesaid, and considering the evidence on record, I am of the opinion that the learned Magistrate has misappreciated the evidence on record in coming to the conclusion that the ownership of the vehicle in question is not established since prima facie, the ownership seems to be of the applicant. The Muddamal article being a car cannot be permitted to remain in the custody of the police exposed to head and cold because the automobile is likely to suffer heavy damage in such situation. To avert this situation, I am inclined to entrust the interim custody of the car to the applicant. In that view of the matter, this Criminal Revision Application deserves to be allowed subject to certain conditions.

In the result, this Criminal Revision Application is allowed. The judgment and order dated 3-3-2005 passed by the learned In-charge. Jt. Judicial Magistrate, First Class, Bardoli, in Criminal Misc. Application no. 50/2005 is hereby quashed and set aside. It is directed that the Muddamal vehicle i.e. Maruti Frontie car no.DD-03--C-2606 be handed over to the present applicant on condition that he shall furnish personal bond of Rs.1,50,000/(Rupees one lakh fifty thousand with one surety of the like amount to the satisfaction of the trial Court with a further condition that he shall produce the said vehicle before the trial Court as when when so directed. It is also directed that the said vehicle shall not be used for any illegal purpose and in the event it is found that the car in question is being used for any illegal purpose, the Investigating Agency will be at liberty to take over the custody of the said

car and put the same in custody of the trial Court.

Rule is made absolute in the above terms. Direct service is permitted.

(M.D.Shah,J.)

stnley-mds.